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Monday, September 17, 2001
UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

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In re

LINDA GILBERT and THOMAS ROMANO,

No. 00-11862

[Debtor](#) ⁱ(s).

_____ /

Memorandum of Decision

Shortly before they filed their [Chapter 7](#) ⁱ [bankruptcy petition](#) ⁱ, the debtors sold some shares of stock and put \$10,361.71 into a SEP/IRA. The [trustee](#) ⁱ objected to their [claim](#) ⁱ of exemption on the grounds that the amount exceeded the maximum allowable contribution. The parties stipulated to reserved the issue until after the debtors filed their tax return.

When the return was filed, the debtors conceded that only \$1,994.00 was exempt. They turned over \$3,935.00, which was the balance remaining in the account less the exempt amount of \$1,994.00. ⁽¹⁾ The reason for the small amount turned over was that the value of the IRA had declined dramatically in the nine months between the date of the filing and the date the tax return was filed. The trustee seeks turnover of an additional \$4,432.71. He calculates that amount by deducting the \$1,994.00 exemption and the \$3,935.00 voluntarily


paid by the debtors from the original \$10,361.71. In other words, he asserts that the debtors must absorb the loss entirely. The debtors argue that they owe nothing, in essence arguing that the estate must absorb the entire loss. The court finds that neither side is correct. On the day of filing, the IRA contained \$1,994.00 in exempt funds and \$8,367.71 in non-exempt funds. Thereafter, the fund declined 42% to \$5,929.00. That means that the estate's share was then \$4,853.27 and the debtors' share was \$1,075.73. Since the debtors paid the trustee \$3,935.00, they owe an additional \$918.27. Neither side has cited any cases directly on point. The only ruling of law which the court finds necessary to make is that those cases which deal with appreciation of non-divisible assets such as real estate are not applicable to situations involving losses where dollars, shares of stock, or other easily-divisible assets are concerned. In such cases, the debtor and the estate do not share ownership of anything; each owns a certain amount of dollars or whatever, and must bear the losses on its share. ⁽²⁾

Counsel for the trustee shall submit an appropriate form of order which counsel for the debtors has approved as conforming to this memorandum.

Dated: September 17, 2001

Alan Jaroslovsky

U.S. [Bankruptcy Judge](#) 

1. Apparently, there was no money in the SEP/IRA other than this \$10,361.71 contribution.
2. The court might reach a different result where one side sought [liquidation](#)  and the other side refused. Those facts are not present

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